Court to reject Art. 47 in the *Kwong Yik Bank* case do not apply in the present case. On the other hand, in the *Kwong Yik Bank* case there was a "promise to do something," viz., to pay the money owing to the Bank. In the present case the defendant does not promise to do anything—she promises that the principal debtor shall pay the debt,—which is something quite different, and such promise cannot, I think, be brought within the ambit of Art. 47 without straining the language.

I find accordingly that Art. 95 is the article applicable. This article does not speak of "a promise to do anything" but of the "breach of any contract," and undoubtedly there has been the breach of a contract, because the principal debtor has not paid.

It was argued, however, that the word 'compensation' has a particular meaning, namely, 'statutory damages' (see *Arnold* on Compensation or damages pp. 7 and 8), and that it is only in British India, by virtue of the Contract Act (s. 73) that the meaning of 'compensation' is extended to include any payment which a party would be entitled to claim on account of any loss or damage arising from breach of contract (*Mitra* 6th ed. p. 1422). But the definition in the Indian Contract Act is not found in the Indian Limitation Act, and the meaning attached to 'compensation' in the Limitation Act is a meaning which the Courts in British India have given to the word from the construction of that Act itself. As our Limitation Ordinance is derived from the Indian Limitation Act, it is surely not unreasonable to give the word the same construction as it bears in the Indian Act, especially as 'compensation' is not a term of art, and in its ordinary meaning can well be held to include damages for breach of contract.

If, however, Mr. Johannes is right in his contention then his argument will exclude, not only Art. 95, but also Art. 47, which likewise speaks of 'compensation.' In the result there would be no special article applicable and recourse would have to be had to the 'omnibus' Article No. 97. The period of limitation under Art. 97 is six years, and the result would be the same as if Art. 95 applied.

In my opinion therefore the claim is not barred by limitation, and the plaintiff succeeds upon the issue before the Court. The defendant must pay the costs of the issue: such costs to be plaintiff's in any event.

*Order accordingly.*

Solicitors for the plaintiffs—*Donaldson & Burkinshaw.*

Solicitors for the defendant—*Johannes & Sammy.*

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

Sept. 18, 1937.

## REX v. WONG PENG.

[SINGAPORE MAGISTRATE'S APPEAL No. 69 of 1937].

*Importation of Textiles (Quotas) Ordinance (Cap. 162), s. 7 sub—s. 1—Importing artificial Japanese silk otherwise than under licence.*

The Importation of Textiles Quotas Ordinance does not cause any presumption to arise from the fact of possession of unlicensed textiles. S. 115 of the Evidence Ordinance cannot be used to raise the presumption that a person in possession of unlicensed textiles himself imported them. Even if the possessor knows that they had been wrongfully imported by someone else, that is not an offence under the Ordinance.

MAGISTRATE'S APPEAL.

*Menon* for appellant.

*Storr*, Crown Counsel for respondent.

The facts and arguments appear sufficiently from the judgment.

At the conclusion of the hearing the Court allowed the appeal and delivered its grounds of judgment.

**TERRELL, AG. C.J.**—The accused was charged under s. 7 sub-s. 1 of the Importation of Textiles (Quotas) Ordinance (Cap. 162) with importing artificial silk of Japanese manufacture otherwise than under a licence issued by the Registrar. He was convicted and fined.

The goods were not found in the accused's possession, but in the possession of an Indian dealer, who had obtained them from the accused. It is to be observed that the possession or sale of unlicensed textiles is not an offence under the ordinance. The only offence of which the accused could be convicted was that of "importing," and of that there was no evidence whatever, except the fact that at one time the goods were in his possession. Further, the Ordinance makes no presumption from the fact of possession, and Crown Counsel in support of the conviction could only rely on the presumption supplied by s. 115 of the Evidence Ordinance, illustration (a) which reads:—

> "The Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief, or has received the goods knowing them to be stolen, unless he can account for his possession."

I do not think that this section can be used to raise a presumption that a person in possession of unlicensed textiles himself imported them. If it raises the presumption that he knew that they had been wrongfully imported by someone else. that is not an offence under the Ordinance.

In my opinion the defence should not have been called upon, and accordingly the learned District Judge's comments on the weakness of the defence are irrelevant.

Where an Ordinance with penal provisions is defective, it is for the legislature to remedy the matter. The Courts can only interpret the law as it stands.

The appeal therefore was allowed, the fine remitted and the applicant, who was in custody, discharged.

*Appeal Allowed.*

Solicitor for appellant:—*K. P. K. Menon.*

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[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

September 4 & 7, 1937.

## REX v. LEE WHOY KWOI.

[SINGAPORE MAGISTRATE'S APPEAL No. 68 of 1937]

*Women & Girls' Protection Ordinance (Cap. 33) Section 6—living on earnings of prostitution —presumption—onus of proof—uncorroborated evidence of prostitute—Court's discretion in accepting.*

Where it is proved that a woman is a prostitute and that the accused is living with her a rebuttable presumption arises under Section 6 (3) of the Women & Girls' Protection Ordinance that the accused is knowingly living on the earnings of prostitution. It is not necessary to prove any receipt of the earnings but it is essential for the accused in such a case to show that neither wholly nor in part is he dependent for his livelihood upon her immoral earnings.

Where the only evidence of prostitution rests on the testimony of the woman with whom the accused is said to have lived, such evidence may be accepted without any corroboration but it is always in the discretion of the Court to require corroboration. Where the conviction will rest upon the direct testimony of the woman alone, then, should there be any circumstances to impeach her credibility, the Court should look with extreme care at those circumstances as elements of doubt.

The accused kept as mistress a woman who had previously been a prostitute. Evidence was led showing that throughout the time that they had been living together the accused earned sufficient or more than sufficient for his own support and that, admittedly, for a part of that time he had supported his mistress. The woman, however, alleged that during the period, January to June 1936, she gave him small sums daily. On the contrary, the accused testified that he had supported the woman and had tried to prevent her leaving the lodgings. The accused was convicted by the District Judge.

On appeal to the High Court against the conviction;

*Held*, applying the principles above enunciated, that the verdict was against the weight of evidence and therefore the conviction must be set aside.

The facts and arguments sufficiently appear from the judgment below.

MAGISTRATE'S APPEAL.

*Morrison* for the appellant.

*Storr*, Crown Counsel, for the Crown.

The appeal was heard before Mr. Justice Horne on the 4th of September 1937. The learned Judge delivered an oral judgment allowing the appeal and, on further consideration, gave his reasons for judgment on the 7th September, 1937.

*Cur. Ad. Vult.*

**HORNE, J.**—First it is necessary to establish that at the time of the charge the woman is practising her profession as a prostitute. Secondly that the accused is living with the woman. The onus then shifts to the accused to show that he is not knowingly living wholly or in part on the earnings of prostitution.

There are certain undisputed facts, viz., that the woman was a prostitute and then agreed to give up that life and live with the accused as his mistress, and that they did live together at 14 Ann Siang Hill.

Of course it is a dangerous thing for a man to associate with a former prostitute.

It is somewhat more difficult to establish as to what a kind of a life she lived there. For a time it is agreed by the man and the woman, that the man worked and earned money. Nevertheless we find the woman keeping a maid, an amah, which hardly appears essential.

There is evidence that the man was in employment and earned money. It is entirely between the man and the woman as to whether he gave those earnings to the woman and thus maintained her as he declares. In fact it is difficult to find any direct evidence of what the arrangements were between them other than their own statements which are mutually contradictory.

She says she is a prostitute, while he declares that he has tried to prevent her being a prostitute. And the question whether she gave him money and food, if it is decided against the accused, has to be decided upon her evidence alone.

There is no rule of law which forbids a conviction in this class of case upon the uncorroborated testimony of the woman concerned. Nor is there a rule that the Court must warn itself or the jury of the danger of convicting on such evidence. The matter appears to be entirely within the discretion of the Court, which may presume, if the circumstances of the case appear to justify it in so doing, that the evidence of a person who is leading a life of prostitution is unworthy of credit.